IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 2120 of 2006

Date of Decision : 02.05.2007

Jatinder Singh .... Petitioner

Versus

State of Punjab .... Respondent

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Akshay Bhan, Advocate,
for the petitioner.

Mr. B.S. Sra, Deputy Advocate General, Punjab,
for the respondent.

S.D. Anand, J.

1. The controversy presently agitated is as under:-

2. The petitioner was an employee, as Field Officer, of The Kharar Primary Co-operative Agricultural Development Bank Ltd., Kharar (hereinafter referred to as the "PADB"). It (PADB) is a member of the Apex Bank-State Cooperative Agricultural Development Bank Limited, Chandigarh (hereinafter referred to as the "SADB"). It (PADB) has its own bye-laws, duly approved by the Registrar Cooperative Societies, Punjab (hereinafter referred to as the "RCS"). It has its own elected Board of Directors. The funds available with it raised by shares, loans from Apex Bank, NABARD and from other financial institutions, as approved by the Registrar.

3. On 25.08.2005, the petitioner was caught red handed while accepting illegal gratification of Rs. 4000/- from one Dharminder Singh son of Sardara Singh resident of Dubali (Ghaga), Tehsil and District Ropar. The

amount of illegal gratification was accepted by him as a motive or reward for issuing a cheque of Rs. 32,000/- which represented the loan amount advanced to Dharminder Singh aforementioned. Case FIR No. 37 dated 25.08.2005 under Section 7 read with Section 13(2) of Prevention of Corruption Act, 1988 was registered by Police Station Vigilance Bureau Ludhiana.

4. The framing of charge was contested by the petitioner before the learned Special Judge, Rupnagar on a plea that the provisions of Prevention of Corruption Act (hereinafter referred to as the "PC Act") are not applicable to the petitioner as he cannot be deemed to be a public servant within the meaning of the PC Act.

5. The plea was negatived by the learned Special Judge who recorded a finding that the petitioner is within the ambit of the provisions of Section 2(c) (iii) of the PC Act.

6. The petitioner has filed the present revision petition for invalidation of the line of reasoning adopted by the learned Special Judge.

7. Mr. Akshay Bhan, learned counsel for the petitioner, argued that the PADB is not an authority or a body owned or controlled or aided by the Government and, thus, its employees cannot be said to hold the status of a public servant in terms of Section 2(c) of the PC Act. Reliance, in support of the plea averred, was placed upon (Government of Andhra Pradesh versus P.Venku Reddy), 2002(4) R.C.R. (Criminal) 557.

8. The plea advocated on behalf of the petitioner was contested by the State of Punjab. Learned Deputy Advocate General, Punjab, argued that the petitioner is a public servant within the ambit of the provisions of Section 2(c)(iii) of the PC Act inasmuch as he is a person in the service/pay

of PADB which was established by a State Act. Reliance, in support of the plea, was placed upon (S.Komaraiah versus State, ACB rep. by Inspector , CIU ACB, Hyderabad), 2003(4) RCR (Criminal), 607.

9. The fact that establishment of PADB came about under a statute was not disputed at the time of arguments before this Court. This fact is noticed at the very outset in view of an averment to the contrary in the grounds to the effect that it had not been constituted under the Act.

10. For enabling appropriate appreciation of the controversy, it would be useful to quote hereunder the definitive provisions of Section 2(c) (iii) of the PC Act:-

> "2. Definitions. - In this Act, unless the context otherwise requires-
>
> (a) & (b) xxx xxx xxx
>
> (c) "public servant" means -
>
> (i) & (ii) xxx xxx xxx
>
> (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
>
> (iv) to (xii) xxx xxx xxx"

It is beyond the pale of controversy that the fact whether the petitioner is within the ambit of the definitive of provisions of a public servant or not has to be adjudicated upon on the touch stone of the provisions of Section 2(c) (iii) of the PC Act. As would be evident from a perusal of the above quoted provision, it consists of two parts. The first part thereof refers to a person

who is in the service or pay of a corporation established by or under a Central, Provincial or State Act. The latter part refers to any person in the service or pay of an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act. In the present case, it is the conceded position that the PADB came to be established under the Punjab Cooperative Societies Act, 1961. In that view of things, the irresistible finding is that the petitioner is a public servant within the ambit of the former part of the definitive provisions aforementioned.

11. The reliance placed by learned counsel for the petitioner upon Government of Andhra Pradesh versus P. Venku Reddy (supra) is misconceived. That ruling, in fact, runs contrary to the plea which is sought to be buttressed by that authority. In that case, respondent – P. Venku Reddy was a supervisor in the District Co-operative Central Bank Limited, Nellore. The police wanted to prosecute him for an offence of having accepted bribe under the Prevention of Corruption Act. On a petition filed by respondent – P. Venku Reddy under Section 482 Cr.P.C., a Division Bench of Andhra Pradesh High Court quashed the proceedings on the solitary premise that he was not a public servant as defined under Section 2 (c) (iii) of the PC Act. The Apex Court reversed that finding and held that the employees of a Cooperative Society which is controlled or aided by the Government are covered by the comprehensive definition of public servant as contained in Section 2(c)(iii) of the PC Act. Of course, it was the latter clause of the quoted provisions which was held by the Apex Court to be applicable. The finding recorded in that case was that the Andhra Pradesh State Co-operatrive Bank Limited had been receiving financial assistance

from the State Government under Section 43 of the APCS Act. That statement of fact, as mentioned in the counter affidavit, had not been controverted. In the present case, however, it is evident that it is the former part of the quoted provision which nails the plea raised on behalf of the petitioner.

12. Once the applicability of the latter part of the provision aforementioned, it would be pertinent to notice in the present case that, the nominees of the RCS has compulsively to be on the management Committee of the Primary Bank.

13. Clause (iii) of Section 25 of the Model Bye-Laws of The Primary Cooperative Agricultural Development Banks Limited is as under:-

> "25. The management of the Primary Bank shall vest in a committee. The Committee shall consist of eight members constituted in the following manner:
>
> (i) & (ii) xx xx xx
>
> (iii) A nominee of the Registrar."

In terms of Section 30 (a), the matter pertaining to the convening of the meeting and the quorum thereof is governed by the rules notified by the Government. Further, in terms of Section 34(iv), the Committee has to frame rules regarding the business and functioning of the institution, consistent with the provisions of those bye-laws and with the prior approval of the RCS. The fixture of rates and traveling and daily allowance payable to a Committee member is also subject to the approval of the Registrar. The fee payable by the borrowers with the loan application is to be prescribed subject to the approval of the RCS. The General Body of the Primary Bank also has a nominee of the Registrar. If the Committee fails to call the

general meeting in spite of receipt of an appropriate requisition, the signatories to the requisition are entitled to refer the matter to the RCS who call, on his own, summon the general meeting. The election of members of the Committee has to be in accordance with the rules of elections framed by the RCS. The allocation of net profit is to be decided upon by the general body on the recommendation of the Committee and subject to the approval of the RCS. The rate of interest at which the Primary Bank make give loan to its members is determined by the Committee subject to the approval of the RCS. A part of the net profits of the Primary Bank is to be forwarded to a co-operative Education Fund to be administered in accordance with the instructions of the RCS. Even that preparation and utilization towards funds aforementioned is to be decided by the RCS. The reserve fund of the Primary Bank is to be invested and utilized in such manner as the statutory rules notified by the Government may specify. If any doubt arises with regard to the interpretation of any of the bye-laws, matter has to be referred to the RCS whose decision shall be final. All these facts would indicate that the functioning of the PADB is controlled by the Government. By the very nature of things, the RCS is a public servant in the employment of the State. In that view of things, even the latter part of section 2(c)(iii) of the PC Act would indicate that the petitioner is a public servant.

14. The position that, thus, emerges from the above discussion is as under:-

The petitioner is proved to be in the service/pay of PADB which had been concededly established under a State Act.

It also stands proved that functioning of PADB in certain very important matters quoted in the preceding paras, is subject to the control of

the RCS.

15. In the light of foregoing discussion, the petition is held to be bereft of merit and is ordered to be dismissed.

May 02, 2007 (S.D. Anand)
vkd Judge